

REMARKS

The amendment to claim 95 corrects a grammatical error. The amendment to claim 122 makes this claim dependent on claim 95, and in effect only changes the preamble of the claim. No new matter has been added. Upon entry of this amendment, claims 53-139 are present in the application, and claims 53-83 and 95-139 are active.

RESTRICTION RESPONSE

The Office has restricted the present application as follows:

Group I – Claims 53-83 and 95-121

Group II – Claims 84-94; and

Group III – Claims 122-139 (as originally presented).

Applicants elect, with traverse, Group I – Claims 53-83 and 95-121.

Furthermore, as now amended, claims 122-139 should now be included with Group I. As a single disclosed species, for search purposes only, applicants elect Pb²⁺. All elected claims read on the elected species.

Restriction is only proper if the identified groups are independent or distinct. The burden is on the Office to provide reasons and/or examples to support its conclusion that the identified groups are independent or distinct. M.P.E.P. § 803.

The Office has characterized the relationship between Groups I and II as process of use and product. Citing M.P.E.P. § 806.05(h) the Office has asserted that the process could be performed with a materially different product, such as a pH meter. However, applicants note that the criteria of M.P.E.P. § 806.05(h) is either “(A) **the process of using as claimed** can be practiced with another materially different product; or (B) the product as claimed can be used in a materially different process.” M.P.E.P. § 806.05(h) (emphasis added). The **process as claimed** uses a nucleic acid enzyme, a fluorophore and a quencher: applicants are unaware of any pH meter that uses a nucleic acid enzyme, a fluorophore and a quencher. Unless the Office can provide some explanation as to how any pH meter could be used to carry out the **process as claimed**, applicants submit that the Office has failed to the burden required to sustain the restriction requirement.

The Office has characterized the relationship between Groups I and III as unrelated. Citing M.P.E.P. §§ 806.04 and 808.01, the Office has asserted that the function of Group I is to detect the presence of an ion in a sample while the function of Group III is to determine the presence of Pb²⁺ ions in a sample. Applicants submit that

these functions set forth by the Office are the same function: Claims 73, 83, and 95-121, all part of Group I, all specify that the ion is Pb^{2+} and therefore have the same function as the Office has set forth for Group III. These functions are the same, and therefore the Office has failed meet any of the criteria specified by M.P.E.P. §§ 806.04 and 808.01.


The Office has characterized the relationship between Groups II and III as process of use and product. Citing M.P.E.P. § 806.05(h) the Office has asserted that the process could be performed with a materially different product, such as by detecting the presence of an ion without determining the concentration. However, the Office has failed to explain how detecting the presence of an ion is **materially different** from determining the concentration of the ion, since it is impossible to carry out the reverse, i.e. determining the concentration of an ion without detecting its presense.

Applicants submit that the Office has failed to meet the burden needed to sustain the Restriction Requirement. Withdrawal of the Restriction Requirement is respectfully requested.

With regard to the species election, applicants note that if the elected species is found allowable, then the search must be extended to other species.

Applicants submit that the application is now ready for examination on the merits. Early notice of such action is earnestly solicited.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Paul E. Rauch', written over a horizontal line.

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